

IC 27-8-19.8

Chapter 19.8. Viatical Settlements

IC 27-8-19.8-1

"Applicant" defined

Sec. 1. As used in this chapter, "applicant" refers to an applicant for a viatical settlement provider license under this chapter.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.1.*

IC 27-8-19.8-2

"Department" defined

Sec. 2. As used in this chapter, "department" refers to the department of insurance.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

IC 27-8-19.8-3

"Insured" defined

Sec. 3. As used in this chapter, "insured" refers to an individual who has a catastrophic or life threatening illness or condition.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.2.*

IC 27-8-19.8-4 Repealed

(Repealed by P.L.32-1998, SEC.32.)

IC 27-8-19.8-4.3

"Viatical settlement agent" defined

Sec. 4.3. As used in this chapter, "viatical settlement agent" means a person that solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

As added by P.L.32-1998, SEC.3.

IC 27-8-19.8-4.5

"Viatical settlement broker" defined

Sec. 4.5. As used in this chapter, "viatical settlement broker" means a person that represents a viator and for a fee, commission, or other valuable consideration, solicits, offers, or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers.

As added by P.L.32-1998, SEC.4.

IC 27-8-19.8-5

"Viatical settlement provider" defined

Sec. 5. (a) As used in this chapter, "viatical settlement provider" means a person, other than a viator, that:

- (1) enters into a viatical settlement contract with a viator; or
- (2) obtains financing for the purchase, acquisition, transfer, or other assignment of one (1) or more viatical settlement contracts, viaticated policies, or interests therein, or otherwise

sells, assigns, transfers, pledges, hypothecates, or disposes of one (1) or more viatical settlement contracts, viaticated policies, or interests therein.

(b) The term does not include any of the following:

(1) A bank, savings bank, savings association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.

(2) The issuer of a life insurance policy that makes a policy loan, permits surrender of the policy, or pays other policy benefits, including accelerated benefits, in accordance with the terms of the policy.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.5; P.L.79-1998, SEC.32.

IC 27-8-19.8-6

"Viatical settlement contract" defined

Sec. 6. As used in this chapter, "viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract for consideration that is less than the expected death benefit of the life insurance policy or contract.

The term does not include the following:

(1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

(2) An agreement with a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.6; P.L.128-2000, SEC.2.

IC 27-8-19.8-6.5

"Viaticated policy" defined

Sec. 6.5. As used in this chapter, "viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider under a viatical settlement contract.

As added by P.L.32-1998, SEC.7.

IC 27-8-19.8-7

"Person" defined

Sec. 7. As used in this chapter, "person" means an individual, an association, a corporation, a limited liability corporation, an estate,

a partnership, a trust, or any other business or legal entity.
As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.8.

IC 27-8-19.8-8

"Viator" defined

Sec. 8. As used in this chapter, "viator" refers to the owner of a life insurance policy or a certificate holder under a group policy that insures the life of an insured who enters or seeks to enter into a viatical settlement contract.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.9.

IC 27-8-19.8-8.5

Persons required to be licensed as insurance producer with life qualification

Sec. 8.5. The following must be licensed as an insurance producer with a life qualification under IC 27-1-15.6-7:

- (1) A viatical settlement broker.
- (2) A person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

As added by P.L.32-1998, SEC.10. Amended by P.L.132-2001, SEC.14; P.L.178-2003, SEC.71.

IC 27-8-19.8-8.6

Exemptions from licensing requirement

Sec. 8.6. The following are exempt from the licensing requirement under IC 27-8-19.8-8.5:

- (1) An accountant, an attorney, or a financial planner retained to represent the viator, and whose compensation is paid directly by or at the direction of the viator.
- (2) A regularly salaried officer or employee of a viatical settlement broker or viatical settlement provider, if the officer or employee's duties and responsibilities do not include the solicitation or negotiation of viatical settlement contracts.
- (3) The following persons, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the person's employees or the employees of the person's subsidiaries or affiliates involving the use of viatical settlement contracts issued by a licensed viatical settlement provider, if the person is not in any manner directly or indirectly compensated by the viatical settlement provider:
 - (A) An employer.
 - (B) An officer or employee of an employer.
 - (C) A trustee of an employee trust plan.

As added by P.L.32-1998, SEC.11.

IC 27-8-19.8-8.7

Fiduciary duties of viatical settlement brokers

Sec. 8.7. A viatical settlement broker:

(1) represents only the viator; and
(2) owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator; regardless of the manner in which the viatical settlement broker is compensated.

As added by P.L.32-1998, SEC.12.

IC 27-8-19.8-9

License required for viatical settlement providers

Sec. 9. After December 31, 1998, a person may not act as a viatical settlement provider unless the person holds an unexpired license issued under this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.13.

IC 27-8-19.8-10

Application and fee for license

Sec. 10. (a) An applicant must do the following to obtain a license as a viatical settlement provider:

- (1) Apply for the license on forms prescribed by the department.
- (2) Provide information required by the department.
- (3) Pay the license fee.

(b) The application must include the name of each officer, member, or employee of the applicant who will be authorized by the applicant to act as a viatical settlement provider under the license if issued to the applicant.

(c) The department shall adopt rules under IC 4-22-2 to set the licensing fee required by this section.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.14.

IC 27-8-19.8-11

Investigation of applicant; issuance of license

Sec. 11. The department shall investigate an applicant and issue a license to the applicant if the department finds all of the following:

- (1) The applicant is competent and trustworthy and intends to act in good faith as a viatical settlement provider.
- (2) The applicant has a good business reputation.
- (3) The applicant has had the experience, training, or education to qualify the applicant as a viatical settlement provider.
- (4) If the applicant is a corporation, or limited liability corporation, it is either:
 - (A) incorporated under Indiana law; or
 - (B) authorized to do business in Indiana.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.15.

IC 27-8-19.8-12

Refusal to issue license

Sec. 12. The department may refuse to issue a license to an applicant if the department is not satisfied that any officer, employee, partner, or stockholder who could materially influence the applicant's conduct meets the standards of this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

IC 27-8-19.8-13

Nonresident licenses

Sec. 13. The department may not issue a license to an applicant who is not an Indiana resident unless the applicant does either of the following:

- (1) Files and maintains with the department a written designation of an agent for service of process.
- (2) Files with the department the applicant's written irrevocable consent that any action against the applicant may be begun against the applicant by the service of process on the department.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

IC 27-8-19.8-14

Individuals authorized to act as viatical settlement benefits providers

Sec. 14. A license issued under this chapter authorizes all officers, members, and employees of the license holder designated under section 10(b) of this chapter to act as viatical settlement providers under the license.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.16.*

IC 27-8-19.8-15

Expiration and renewal of license

Sec. 15. (a) A license issued or renewed under this chapter expires on July 1 after its issuance or renewal.

(b) A viatical settlement provider may renew a license by:

- (1) applying for renewal on forms prescribed by the department; and
- (2) paying the renewal fee.

(c) The department shall adopt rules under IC 4-22-2 to do the following:

- (1) Set the renewal fee required by this section.
- (2) Set a date before July 1 and before which receipt of a license renewal application can be processed without a lapse in the license.

(d) A viatical settlement provider that submits an application for renewal after the date set under subsection (c)(2):

- (1) is not entitled to have the license renewed before July 1; and
- (2) may not act as a viatical settlement provider until the department issues the license renewal, if the department is unable to process the renewal before July 1.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.17.

IC 27-8-19.8-16

Disclosure of identity of individuals associated with viatical settlement providers

Sec. 16. The department may at any time require a viatical settlement provider or an applicant for a license to disclose fully the identity of all of the viatical settlement provider's or applicant's officers, employees, partners, and stockholders.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.18.

IC 27-8-19.8-17

Annual reports

Sec. 17. (a) A viatical settlement provider shall file with the department an annual report containing information prescribed in rules adopted by the department under IC 4-22-2.

(b) The rules adopted by the department under subsection (a) shall set the date by which annual reports must be submitted.

(c) A viatical settlement provider shall maintain records of each viatical settlement at least five (5) years after the death of the insured.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.19.

IC 27-8-19.8-18

Examination of viatical settlement provider or applicant

Sec. 18. (a) When the department reasonably considers it necessary for the protection of the public, the department may examine the business and other affairs of a viatical settlement provider or an applicant.

(b) The department may order a viatical settlement provider or an applicant to produce records, books, files, or other information reasonably necessary to ascertain whether the viatical settlement provider or the applicant has violated or is violating the law or otherwise has acted or is acting contrary to the public interest.

(c) The viatical settlement provider or applicant shall pay the expenses of an examination conducted under this section.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.20.

IC 27-8-19.8-19

Suspension, revocation, or refusal to renew license

Sec. 19. After a hearing under IC 4-21.5, the department may suspend, revoke, or refuse to renew a viatical settlement provider's license, or impose a civil penalty, or both, if the department finds any of the following:

(1) There was a misrepresentation in the application for the license.

(2) The viatical settlement provider is untrustworthy or

incompetent to act as a viatical settlement provider.

(3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators.

(4) The viatical settlement provider has been convicted of, or pleaded guilty or nolo contendere to, an offense the definition of which includes fraudulent acts as an element of the offense regardless of whether a judgement has been entered by the court.

(5) The viatical settlement provider no longer meets the requirements for initial licensure.

(6) The viatical settlement provider has failed to honor the contractual obligations of a viatical settlement contract.

(7) The viatical settlement provider has violated this chapter.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.21.*

IC 27-8-19.8-20

Repealed

(Repealed by P.L.32-1998, SEC.32.)

IC 27-8-19.8-21

Required terms of viatical settlement contract

Sec. 21. (a) A viatical settlement contract must establish the terms under which the viatical settlement provider will pay value, in return for the viator's assignment, bequest, devise, sale, or transfer of the death benefit, certificate, or ownership of the insurance policy to the viatical settlement provider.

(b) A viatical settlement contract must provide for the unconditional rescission of the contract by the viator for the longer of the following:

(1) the period ending not more than fifteen (15) days after the receipt of the viatical settlement proceeds by the viator; or

(2) the period ending not more than thirty (30) days after execution of the contract.

(c) A viatical settlement contract is rescinded if the insured dies during the rescission period, subject to repayment of all proceeds to the viatical settlement provider.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.22.*

IC 27-8-19.8-22

Form for viatical settlement contract

Sec. 22. (a) A person may not use a viatical settlement contract form or a disclosure form in Indiana unless the contract form or disclosure form has been filed with and approved by the department.

(b) A viatical settlement contract form or disclosure form filed with the department is considered approved if the department has not disapproved the form within sixty (60) days after the filing.

(c) The department shall disapprove a viatical settlement contract form or disclosure form if the department finds that the contract

form, disclosure form, or the provisions of the contract are:

- (1) misleading or unfair to the viator;
- (2) not in compliance with this chapter; or
- (3) otherwise contrary to the public interest.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.23.

IC 27-8-19.8-23

Required disclosures to viator

Sec. 23. A viatical settlement provider or viatical settlement broker shall disclose the following information to the viator not later than the date of application:

- (1) Possible alternatives to viatical settlement contracts, including accelerated benefits offered by the issuer of the life insurance policy.
- (2) Tax consequences that may result from entering into a viatical settlement contract.
- (3) Possible interruption of assistance provided by medical or public assistance programs as a consequence of entering into a viatical settlement contract.
- (4) The viator's right to rescind a viatical settlement contract as provided in section 21 of this chapter.
- (5) The amount of any fees paid by a viatical settlement provider to a viatical settlement broker.
- (6) A statement that proceeds of the viatical settlement could be subject to claims of creditors.
- (7) A statement that entering into a viatical settlement contract may cause other rights or benefits under the policy, including conversion rights, waiver of premium benefits, family riders, or coverage of a life other than an ill individual, to be forfeited by the viator.
- (8) The procedure for contacts with the insured.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.

Amended by P.L.32-1998, SEC.24.

IC 27-8-19.8-24

Prerequisites to viatical settlement contract with insured

Sec. 24. A viatical settlement provider shall obtain the following before entering into a viatical settlement contract:

- (1) If the viator is the insured, a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence.
- (2) A document signed by the viator and witnessed by two (2) disinterested witnesses in which the viator does the following:
 - (A) Consents to the viatical settlement contract.
 - (B) Acknowledges the catastrophic or life threatening illness.
 - (C) Represents that the viator has a full and complete understanding of the viatical settlement contract.
 - (D) Represents that the viator has a full and complete

understanding of the benefits of the life insurance policy.

(E) Acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily.

(F) Discloses the identity of any person that served as a viatical settlement broker in connection with the viatical settlement contract.

(3) A document in which the insured consents to the release of the insured's medical records.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.25.*

IC 27-8-19.8-24.2

Payment of proceeds of settlement to trust or escrow account; transfer of proceeds of settlement to viator

Sec. 24.2. (a) Immediately upon a viatical settlement provider's receipt of a signed viatical settlement contract, the viatical settlement provider shall pay the proceeds of the viatical settlement to a trust or escrow account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. The account shall be managed by a trustee or escrow agent independent of the parties to the contract.

(b) Within two (2) business days after the viatical settlement provider's receipt of the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated according to the viatical settlement contract, the trustee or escrow agent shall transfer the proceeds to the viator.

As added by P.L.32-1998, SEC.26.

IC 27-8-19.8-24.7

Disclosure of identity of viator

Sec. 24.7. Except as otherwise provided by law, a person with actual knowledge of a viator's identity may not disclose that identity to another person unless the disclosure is:

- (1) necessary to effect a viatical settlement contract and the viator has provided written consent to the disclosure;
- (2) provided in response to an investigation by the commissioner or other governmental officer or agency; or
- (3) in connection with a transfer of a viatical settlement contract or viaticated policy to another licensed viatical settlement provider or to an entity that provides financing to effect the viatical settlement contract under a written agreement with a licensed viatical settlement provider.

As added by P.L.32-1998, SEC.27.

IC 27-8-19.8-24.8

Applicability of IC 16-39 to release of insured's medical records

Sec. 24.8. IC 16-39 applies to the release of an insured's medical records under this chapter.

As added by P.L.32-1998, SEC.29.

IC 27-8-19.8-24.9**Contacts with insured for purpose of determining health status**

Sec. 24.9. (a) The viatical settlement provider or viatical settlement broker may contact the insured for the purpose of determining the health status of the insured not more than:

- (1) one (1) time every three (3) months for an insured with a life expectancy of more than one (1) year; or
- (2) one (1) time every month for an insured with a life expectancy of not more than one (1) year.

(b) Contacts made with an insured under subsection (a) must be made by mail unless the parties agree to another method of contact.
As added by P.L.32-1998, SEC.28.

IC 27-8-19.8-25**Standards for evaluation of reasonableness of payments under viatical settlement contract**

Sec. 25. The department may adopt rules under IC 4-22-2 to establish standards for evaluating the reasonableness of payments under viatical settlement contracts, including regulation of discount rates used to determine the amount paid in exchange for an assignment, a bequest, a devise, a sale, or a transfer of a benefit under a life insurance policy.

*As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.
Amended by P.L.32-1998, SEC.30.*

IC 27-8-19.8-26**Adoption of rules**

Sec. 26. The department may adopt rules under IC 4-22-2 that the department considers necessary to implement this chapter.

As added by P.L.130-1994, SEC.47 and P.L.116-1994, SEC.70.